

SPECIAL CIVIL APPLICATION NO. 2616 OF 1983

Date of decision: 12-1-1996

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Coram: S.K. KESHOTE, J

(12-1-1996)

ORAL JUDGMENT:

None present for the petitioner.
Ms. Sejal Mandalia for the respondents.

Learned counsel for the respondents Ms. Sejal Mandalia prays for time for adjournment of the case on two

counts. Firstly she states that the papers of this case have not been sent to her from the office, and secondly the reply to the writ petition is to be filed on behalf of the respondents for which reasonable time may be granted. I do not find any substance in both the prayers made by the learned counsel for the respondents. This writ petition is of the year 1983. It has come up for final hearing after twelve years. The writ petition was admitted after notice to the respondents. Notice was issued on 27th May, 1983, and interim relief in terms of para 12(c) has also been granted. In these circumstances I fail to see any justification in the prayer of the learned counsel for the respondents made after twelve years for time to file reply to the writ petition. The respondents had enough time to file reply if they so wished, but they have not availed of that opportunity. So far as the other request is concerned, it is also not acceptable. It is the internal matter of the office of the Government Pleader. It shows how the files are being maintained in the office of the Government Pleader. This matter was notified for hearing on 5th January, 1996, and came up for hearing today after six or seven days. I fail to see why this time was not sufficient to trace out the file in the office. It appears that no body cares in the office of the Government Pleader to trace out files of the cases which are being notified for hearing. That is how the hearing of the cases are being delayed.

2. I have perused the writ petition. I am satisfied that this writ petition deserves acceptance. The petitioner was appointed as Talati on 23-12-1944 in the Princely State of Kutch. After merger of the princely state in the year 1948, the territory of Kutch was administered by the Central Government. With effect from 26th January, 1950 it became Part-C State. On reorganisation of the States in 1956 the State of Kutch was merged in the Greater Bombay State. On bifurcation with effect from 1-5-1960 Kutch became part of the newly formed State of Gujarat.

3. In the year 1957 the petitioner was promoted as Circle Inspector and thereafter in the year 1975 he was promoted with effect from 1-3-1975 to the post of Circle Officer which is a post in the cadre of Deputy Mamlatdar. The petitioner, in para 3 of the writ petition, stated that in the erstwhile State of Kutch there was no proper maintenance of service records of the employees, which fact stands uncontested by the respondents. Not only this, whatever details recorded in the service record of the employees were also not verified. The petitioner stated that he was not aware of the entries made in the service record. After formation of the State of Gujarat, it is the case of the petitioner, that the Government of Gujarat

directed all the officers to verify and update the service record of the employees and complete the same after due verification, so that in the record there may not be errors or omissions and commissions. The petitioner was called upon by the Mamlatdar under whom he was posted at the relevant time to produce school leaving certificate or any other document in support of his date of birth. The petitioner had his education at Alfred High School, Bhuj. In the general register maintained at the school his name has been registered at serial No.2036 and his date of birth is entered as 7-11-1926. The petitioner has taken certificate from the Head Master of Alfred High School, Bhuj, and the same was produced before the Mamlatdar to show and establish that his date of birth is 7-11-1926.

4. In the service record the date of birth of the petitioner is entered as 30th May, 1923. It is the case of the petitioner that it was unverified date of birth and he was not aware of the entry of the said date of birth in his service record. Copy of the aforesaid certificate has been submitted by the petitioner at annexure-A to the petition. After due verification the Mamlatdar has attested the date of birth of the petitioner as 7-11-1926 in his service record. The petitioner contended that the Mamlatdar has powers for verification and attestation of the entries in service book. Verification and attestation made by the Mamlatdar in the service record of the petitioner of his date of birth has been reviewed by the then Collector, Bhuj, and the said officer, after examining the record in the light of the Government instructions and also obtaining instructions from the State Government as regards reconciliation of the date of birth as verified and certified by the Mamlatdar, confirmed the date of birth of the petitioner to be 7-11-1926. The petitioner was allowed to continue in service on the basis of the date of birth as 7-11-1926, as per order dated 25-3-1981 passed by the Collector. Otherwise he would have retired in the month of May, 1981.

5. The Collector, all of a sudden, issued show cause notice dated 27-4-1983 to the petitioner to show cause as to why the order dated 25-3-1981, by which the petitioner is continued in service considering his date of birth as 7-11-1926, should not be cancelled. By the said notice the petitioner was further informed that calculating his age on the basis of the old entry in the service record, the petitioner would be deemed to have reached the age of superannuation on 31st May, 1981 and he will be deemed to have retired on and after 1-6-1981, and the interregnum service period will be regularised under the provisions of B.C.S.R. as period of re-employment. On receipt of the

said show cause notice the petitioner made request to the Collector for supplying copies of various documents and orders. The Collector did nothing, and on 23rd May, 1983 the ..R

the order dated 25-3-1981 was cancelled and the petitioner's date of birth originally recorded was ordered to be treated as final. Accordingly the petitioner was deemed to have retired from service with effect from 31st May, 1981, and his services were ordered to be terminated with effect from 31st May, 1983, treating the interregnum as period of reemployment under the provisions of B.C.S.R. This is the order under challenge in the present writ petition at the instance of the petitioner.

6. On the basis of the date of birth 7-11-1926 the petitioner has attained the age of superannuation on 6-11-1984. This Court has granted interim relief to the petitioner in terms of para 12(c) of the petition, which read as under:

"That pending admission and final disposal of this petition, the impugned
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stayed."

In pursuance of the said order the petitioner remained in service till 30th November, 1984.

7. The document, that is, certificate of the date of birth which has been produced by the petitioner before the Mamlatdar has not been controverted by the respondents. The Collector concerned had accepted the date of birth of the petitioner as 7-11-1926. This date of birth has been accepted on the basis of the school leaving certificate reference to which has been made above. Once the said date of birth has been accepted by none other than the District Collector who was the competent authority, after taking into consideration the Government's instructions and completing other formalities and the said date of birth has also been acted upon by continuing the petitioner in service till 31st May, 1983, I fail to see any justification in the subsequent action of the respondent Collector to give show cause notice to the petitioner for cancellation of his earlier order dated 25th March, 1981. Correction of the date of birth has been made after completing all the aspects and taking into consideration the document produced by the petitioner.

8. With reference to the record in the Princely State of Kutch being not maintained properly, which fact has been

accepted by the State of Gujarat in which the erstwhile State of Kutch has been ultimately merged, and all the employees were directed to produce documents for the purpose of verification of the date of birth when the State of Gujarat itself has decided to correct the entries in the service records of the employees and to make them upto date, and in pursuance thereof the date of birth of the petitioner was corrected on the basis of the document produced by him, there was no ground, much less sufficient ground, for review of the order dated 25th March, 1981. Once a cautious decision was taken by none other than the then District Collector and the document on the basis of which the date of birth has been accepted as 7-11-1926 was not held to be forged or otherwise a procured document, the order of cancellation of the said decision is arbitrary.

9. It is open to the appointing authority to consider the claim of the employees for correction of the date of birth within reasonable time. The question of consideration of application within reasonable time is of no relevance in the present case as the State of Gujarat itself has decided to make correct entries of the service particulars and relevant record in the service book of the employees. But the requirement of law at that point of time was that the onus to prove that the recorded date of birth was wrong was on the petitioner. The petitioner has discharged his onus and in support of his claim he has produced a cogent evidence. The District Collector has accepted the document and acting thereupon the necessary correction has been made therein. All these have been done in the year 1975 much earlier than the date of retirement of the petitioner.

10. Net result of the above discussion is that the order of the Collector dated 20th May, 1983 annexure-E cannot be allowed to stand. In the result this writ petition succeeds and the same is allowed. The order of the Collector, Kutch at Bhuj dated 20th May, 1983 is quashed and set aside. Rule is made absolute. No order as to costs.

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